formance will not necessarily be deemed laches. Had the plaintiff acquiesced, in the defendants' non-performance, instead of disputing with defendant from time to time concerning this non-performance, plaintiff's acquiescence might have barred his suit. *Scott* v. *Desire,* 175 Ill. App. 215; *Hopkins* v. *Lewis,* 18 Cal. App. 107, 122 Pac. 433. Or had there been any showing that circumstances had so changed in the twelve years as to make the defendant's obligation to perform more burdensome, the plaintiff's remedy would probably have been denied him. *Whitney* v. *Cheshire R. Co.,* 210 Mass. 263, 96 N. E. 676; *Groesbeck* v. *Morgan,* 206 N. Y. 385, 99 N. E. 1046; *Marsh* v. *Lott,* 156 Cal. 643, 105 Pac. 968. Or had defendant, in the meantime, altered his position, *Taft* v. *Henry,* 219 Mass. 78, 106 N. E. 553; or had third parties acquired intervening rights which would be injured by a decree in plaintiff's favor, plaintiff's delay would have been fatal. *Parkside Realty Co.* v. *MacDonald,* 166 Cal. 426, 137 Pac. 21. On the other hand, there are circumstances which would have made plaintiff's position stronger than it was. For instance, had he just learned that the contract had not been performed his chances for a decree would have been bettered, *Stonehouse* v. *Stonehouse,* 156 Mich. 43, 120 N. W. 23, 16 Det. Leg. N. 21; *Agens* v. *Koch,* 74 N. J. Eq. 528, 70 Atl. 348. So also had the delay been caused by the defendant, *Fletcher* v. *Wireman,* 152 Ky. 565, 158 S. W. 982; *Nobles* v. *L'Engle,* 58 Fla. 480, 494, 51 So. 405, 409; or had the contract been one for the sale of land and had the plaintiff, the vendee, been in possession, *Snell* v. *Hill,* 263 Ill. 211, 105 N. E. 16; *Shorett* v. *Knudson,* 74 Wash. 448, 133 Pac. 1029; *Master* v. *Roberts,* 244 Pa. 342, 90 Atl. 735; *Wright* v. *Brooks,* 47 Mont. 99, 130 Pac. 968; *Mills* v. *McLanahan,* 70 W. Va. 288, 73 S. E. 927; *Van Dyke* v. *Cole,* 81 Vt. 379, 70 Atl. 593. This last statement only holds where the possession of the plaintiff, the vendee, was under and not adverse to the contract. *Clinchfield Coal Co.* v. *Clintwood Coal & Timber Co.,* 108 Va. 433, 62 S. E. 329. One case at least has held that the burden is on the plaintiff to explain his delay and that a delay of three years, unexplained, is a bar to the suit. *Sharp* v. *West,* 150 Fed. 458. On the general subject of laches as a bar to a suit for the specific performance of a contract see POMEROY, CONTRACTS, § 370 ff.

TRUSTS—APPLICATION OF STATUTE OF LIMITATIONS TO TRUSTS ARISING BY OPERATION OF LAW.—In an action to quiet title to certain land, the defendant claimed an equitable title to the same, based on a constructive trust. To this claim the plaintiff set up the Statute of Limitations. *Held,* that the statute is applicable to constructive trusts and that the defendant's claim is barred. *Terry* v. *Davenport* (Ind. 1916), 112 N. E. 998.

It is a universal principle that the Statute of Limitations does not operate between the trustee and the cestui que trust of an express trust unless there is an express repudiation by the trustee. *Hatt* v. *Green,* 180 Mich. 383, 147 N. W. 593; *Cruse* v. *Kidd* (Ala. 1915), 70 So. 166; 3 WOOD, LIMITATIONS, 504. However, it is generally held that constructive trusts are subject to the operation of the statute. *Stubbins* v. *Briggs,* 24 Ky. L. Rep. 230, 68 S. W. 392; *King* v. *Pardee,* 96 U. S. 90, 2 WOOD, LIMITATIONS, 508. This would seem reasonable, as a constructive trust is a mere remedial device and there

is a concurrent remedy at law. By analogy, if the right to bring a legal action for fraud is barred, the right to enforce a trust should also be barred. There are some cases which hold, on the other hand, that the Statute of Limitations is not applicable to trusts arising by operation of law, *i. e.*, constructive trusts. *Ackley* v. *Croucher*, 203 Ill. 530, 68 N. W. 86; *Canada* v. *Daniel*, 175 Mo. App. 55, 157 S. W. 1032; but these cases are in the minority.

VENDOR AND PURCHASER—ESTOPPEL BY PLAT.—Lands were laid out in accordance with a plat, with reference to which the plaintiff and defendant purchased. Their respective purchases were located on the opposite sides of a platted street, and abutted on it. Before defendant purchased, plaintiff had fenced in that part of the street now in controversy, and has maintained his fence for more than five years. A statute provides that any street unopened to the public for five years after authority to open same is thereby vacated; and plaintiff, relying on this statute, sues to quiet title to the part of the street fenced by him. *Held*, defendant gained an easement in the platted street by the principle of estoppel which operated to defeat any right of plaintiff, who held under the original grantor, and that the rights of defendant were in no way affected by the statute which had operated to extinguish the rights of the public. *Van Buren* v. *Trumbull* (Wash. 1916), 159 Pac. 891.

That the defendant, as here laid down, acquired an easement in the street by an estoppel which would operate against the grantor, and all holding under him, is well settled. *In Re City of New York*, 82 N. Y. Supp. 417; *Matter of Mayor*, 83 App. Div. (N. Y.) 513; *Sipe* v. *Alley*, 117 Va. 819, 86 S. E. 122; *Gibson* v. *Gross*, 142 Ga. 104, 84 S. E. 373; *Rupprecht* v. *St. Mary's Church Society*, 115 N. Y. Supp. 926, affirmed 198 N. Y. 576; *Poore* v. *Greer*, 22 Del. 220, 65 Atl. 767; *Franklin Ins. Co.* v. *Cousens*, 127 Mass. 258; *Dill* v. *Board of Education*, 47 N. J. Eq. 421; as is also the principle that this private easement is unaffected by the termination of the public right, however caused, *Hoskins* v. *Wathen Bro. Co.*, 20 Ky. L. Rep. 814, 47 S. W. 595; *Douthitt* v. *Canaday, Gilliun & Key*, 24 Ky. L. Rep. 2159, 73 S. W. 757; *Carrol* v. *Asbury*, 28 Pa. Super. Ct. 354; *Shelter* v. *Wetzel*, 242 Pa. 355, 89 Atl. 455; *Swedish Church* v. *Jackson*, 229 Ill. 506, 82 N. E. 348. The plaintiff claimed to have acquired a title by operation of the Statute of Limitations. It would appear from the report that the possession was exclusive, but it is not apparent when it was begun. It is difficult to find any color of right in the plaintiff except that relied upon, but the conclusion reached by the court is based upon the doctrine of estoppel, which, of course, would be no answer to one claiming an original title, acquired by adverse user for the statutory period.

WILLS—CODICIL AS RE-PUBLICATION OF PROVISION CANCELLING DEBTS.—On exceptions to final account of executors for not including in the assets $32,000.00 loaned one of them in 1910 and secured by mortgage, it was contended that the debt was cancelled by the words "any indebtedness to me is hereby